IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 794 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5	Whether it is to be circulated to the civil judge ?	

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STATE OF GUJARAT - Appellant(s)
Versus
IBRAHIM BACHU BAFAN - Opponent(s)

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Appearance :
MR KC SHAH, LD.APP for Appellant(s) : 1,
(MR MH SHAIKH) for Opponent(s) : 1,
MR VK MASHAR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 05/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE C.K.BUCH)

1. By way of filing this appeal under Section 378 of the Code of Criminal Procedure, 1973, the

appellant-State has assailed the judgment and order of acquittal dated 16th April, 1986, passed by the learned Additional City Sessions Judge, Court No.6, Ahmedabad, in Sessions Case No.129 of 1985. The respondent herein is the original accused no.2 and he was chargesheeted along with other three accused persons for the offences punishable under Section 120(B)(1) of the Indian Penal Code read with Sections 3, 9 and 10 of the Indian Official Secrets Act, 1923. The learned trial Judge vide order dated 16th April, 1986 has acquitted all the accused persons, but the appellant-State has preferred appeal against the judgment and order of acquittal recorded by the learned trial Judge qua the present respondent-orig.accused no.2 only. It appears from the tenure of the decision that as the learned Special Public Prosecutor had conceded in reference to the allegations made in the charge framed by the learned trial Judge against the orig.accused nos.1, 3 and 4 saying that as there is no incriminating evidence

against any of these three accused persons, the charge cannot be said to have been held proved. In the background of the facts/case conceded, the present acquittal appeal is only against the respondent-orig.accused no.2.

2. The judgment and order of acquittal has been assailed on various grounds mentioned in paragraph no.5 of the memo of the appeal and Mr.K.C. Shah, learned Additional Public Prosecutor, has taken us through these grounds of challenge and the entire judgment and order of acquittal. To appreciate the say of the appellant-State, firstly we should state the facts which were placed before the learned trial Court in brief. The basic facts have been stated by the appellant-State in paragraph no.2 of the memo of the appeal. For the sake of brevity and convenience, we would like to reproduce the relevant part of paragraph no.2 as under :

> “2. The case of the prosecution

was that the accused no.1 is a Pakistani National and he was apprehended by Border Security Force Head Constable (hereinafter referred to as 'B.S.F.H.C.”) Khushalsing in the outskirt of village Medi at about 4-00 a.m. on 3.11.83. Accused no.1 Mohmadsumar Haji Kasam alias Sumar Botal was thereafter produced before the Lakhpat Police Station in the afternoon of 4.11.81 by the B.S.F. authorities and thereafter the accused no.1 was forwarded to the D.S.P. Bhuj. Thereafter, the complaint was lodged against the accused no.1-Mohmadsumar Haji Kasam accused no.2 i.e. present respondent and accused no.3-Mithu Bava Pathiar with Bhuj Taluka Police Station and offence was registered as C.R.No.272/83 for the offences punishable under Sections 3(1)A, 9, 10(1) of the Indian Official Secrets Act, 1923, under Sections 3 and 12 of

the Passport (Entry) Into India Act of committing breach of Rules 3 and 6 of the Passport (Entry) into India Rules, 1950, section 14 of the Foreign Restriction Area Act, 1960 and Sections 11 and 135(i)(ii) of the Customs Act.

According to the prosecution accused no.1 indulged into smuggling activities in India in league with the accused no.2 to 4 and he used to stay at Madhapur in the house of accused no.2-Ibrahim Bachu Bafan. Accused no.4 is the son of accused no.2. Accused no.1 also smuggled silver from India on different occasions. According to the prosecution, accused nos.2 and 4 have got their houses in military camp of Bhuj or in the vicinity of military camp of Bhuj and the road to the house of accused nos.2 and at Bhuj passes through military camp. According to the prosecution, accused nos.1,2 and 3 were

taken on Police remand upto 14.12.83 and on 13.12.83, on the information given at the instance of accused no.2 i.e. present respondent, from the residential premises of accused no.2 certain video cassettes and one undeveloped film roll were seized under the Panchnama. When the film roll was developed, it was found that photographs were taken of classified equipments and store of 27 wing air force station of Bhuj and some photographs were also taken of a bridge near Rudramata Dam. It was further prosecution case that photographs of Bhuj Air Force Station, photographs of technical area of Bhuj Air Force Station, photographs of Run-Way of Technical Area of Bhuj Air Force Station and photographs of Run-Way and of the Hangar of the Technical Area of Air Force Station and other photographs were there. The case of the prosecution

was that if the photographs were given to the enemy, the enemy country would be in a position to cause lot of damage to the aforesaid Air Force Station and the bridge and other military installation as stated above. After completing the investigation, Police Inspector Shri Bhatt obtained sanction of the Central Government to lodge the complaint against the accused for the offences under the Official Secrets Act and after obtaining the sanction, the complaint was lodged."

3. Before entering into discussion and evaluation of the judgment and order under challenge, we would like to mention that the learned trial Judge has not acquitted the accused on any technical ground like validity of the sanction, etc. and the acquittal is based on merit and on appreciation of the oral as well as documentary evidence led during the course of trial. From the papers available, we have

gone through the evidence of all the relevant witnesses mainly the evidence of Police Inspector Mr.Chandrashankar Bhaishankar Bhatt and the officer examined vide Ex.77 and the officer from the Indian Air Force dealing with administration of the 27th Wing, Indian Air Force and the Authority-in-Command, Bhuj Air Force Station. The evidence of PW-9-Wing Commander Mr.Pratapchandra Umacharan Chaudhari is at Ex.76. The main allegation against the respondent-accused is that in consultation and in co-operation with a Pakistani National, who was apprehended by Khushalsinh-Police Constable, Border Security Force, the respondent-accused was indulging in the Anti-National activities and had taken 33 photographs, produced during the trial vide Exs.38 to 70, and from his possession one cartridge of roll of an undeveloped photographs was found, so that it can be supplied to the person interested against the peace and sovereignty of this country. The learned trial Judge has considered the details

of the photographs in paragraph no.7 of the judgment and order under challenge, and it is observed that photographs at Exs.65 to 67 are of the bridge near Rudramata Dam, which is on Bhuj-Khavda Road and it is 7 (seven) kms. away from Bhuj Air Force Station. Thereafter, the case mainly resting on photographs at Exs.50 to 57 and Exs.60 to 64, according to prosecution, are of Bhuj Air Force Station and out of these photographs, photographs at Exs.50, 51, 62 to 64 are of technical area of Bhuj Air Force Station; whereas the photographs at Exs.53, 54, 60 and 61 are the photographs of run-way of technical area of Bhuj Air Force Station. In the same way, the photographs at Exs.52 and 55 are the photographs of run-way and the hangar of the technical area of Bhuj Air Force Station. The photographs at Exs.56 and 57 are the photographs of hangar of the technical area. The learned trial Judge has observed that one important witness examined from the Air Force Authority has admitted a suggestion made

during the course of cross-examination that these photographs appear to have been taken from a temple site which is on a hillock of nearby area of Bhuj Air Force Station. So it has been inferred by the learned trial Judge that these photographs are not found to be the photographs taken from nearby vicinity or by entering into the prohibited area. As the learned Special Public Prosecutor has conceded against the original accused nos.1, 3 and 4, the learned trial Judge was under obligation to appreciate the say of prosecution qua the allegations made against the respondent-orig.accused no.2 and for recording acquittal, the learned trial Judge has considered various aspects and one of the aspects is that the alleged recovery of the photographs has been made at the time when the accused no.2 was in police custody. He was with police since long. The accused no.1 was under custodial interrogation. The prosecution has come forward with an allegation that when the accused no.2 was in custody and under

interrogation, he divulged with certain information in presence of panchas to police on 13th December, 1983 at about 10-30 a.m. i.e. during the night hours and it is alleged that the accused no.2 gave information that the video cassette and photograph roll were placed in a cupboard in the house in question and he would be willing to point out and even he can produce the same. The learned trial Judge was required to appreciate the trustworthiness of the panch. The panch-witness Pravinsinh Mangalsinh Gohil, examined at Ex.20, by the prosecution has not supported the case of the prosecution on all the vital points. The close reading of the deposition of this witness and the cross-examination made by the learned Special Public Prosecutor, take us to the conclusion that the learned trial Judge has rightly observed that the evidence of the panch witness does not carry the case of the prosecution any further. The panch no.2 has not been examined. So the learned trial Judge was left with no option except to appreciate

the say of the police officer who had drawn the panchnama. If the say of Police Inspector Mr.Bhatt is appreciated in the background of the story narrated by this panch-witness Pravinsinh Gohil, it was not safe to conclude that the cupboard was either pointed out by the accused or opened at the instance of the accused because the evidence also suggests that the key was taken from a lady and the person who was introduced as Ibrahim Bafan had opened the cupboard with that key. It was argued before the learned trial Judge and some arguments have also been advanced by the learned Additional Public Prosecutor before us that the Court can and should rely on the sole testimony of the police officer on this point and the Court can convict the accused no.2 on the sole testimony of Police Inspector Mr.Bhatt (Ex.77) in paragraph nos.9 and 10 of the judgment and order under challenge. We are inclined to adopt the reasons assigned by the learned trial Judge and it is settled that when the appellate forum adopts the reasons

assigned by the learned trial Court, it is not necessary to rewrite the very reasons in different words and reference of adoption of reasons, according to us, can be said to be sufficient to make the order a speaking order. But considering the gravity and sensitivity of the offence, we would like to reproduce the relevant part of the said paragraph nos.9 and 10 of the judgment and order under challenge, which according to us, is a legal and logical finding recorded by the learned trial Judge, which is as under :

> “9. While appreciating the evidence of P.I. Shri Bhatt Ex.77 on the point whether his sole evidence should be relied upon for the purpose of convicting accused no.2. I must point out at the outset that the story made out by the prosecution regarding accused no.2 having discovered the Muddamal cassettes and the photographic roll is highly doubtful. I must point out in this connection that accused

no.2 was arrested by police on 29.11.83 and after producing him before the learned Magistrate on 30.11.83, he was taken on police remand on 30.11.83 for the period upto 14.12.83, 6-0 p.m. During the searching cross-examination, P.I. Shri Bhatt exh.77 has admitted that during this period of police remand, he was interrogating accused no.2 daily, and that accused no.2 did not give any information whatsoever regarding Muddamal articles till the night of 13.12.83. It is very difficult to imagine what induced accused no.2 to given the alleged information on the night previous to the last day of his police remand.. .. ..

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In the case before me, P.I. Shri Bhatt also admitted during his cross-examination that in a case like this, it is necessary to take the search of the house of the accused immediately

after the arrest but he did not take the search of the house of accused no.2. He could not assign any reason why he did not take the search of house of accused no.2, and simply stated that he did not take the search of house of accused no.2, as he did not find it necessary to do so. The matter does not rest here. It is important to note that the Custom Authorities had recorded the statements of accused nos.1,2 and 3 on 13.12.83. The defence got produced on record the statement copy exh.78 of accused no.2 Ibrahim Bachu Bafan recorded by the Superintendent of Customs, Bhuj on 13.12.83 under the provisions of Sec.108 of the Customs Act, 1962. This statement is totally an unculpatory statement and accused no.2 has not given in this statement any fact which may tend to show that he was in possession of any Muddamal articles

like the video cassettes or the undeveloped film roll. If accused no.2 did not give any information whatsoever to even Custom Authorities on 13.12.83 itself and when he had not divulged any information to P.I.Shri Bhatt tough he was interrogated daily right from 29.11.83, it is very difficult to believe that accused no.2 gave information to oblige the police only on the night of 13.12.83 so that police can involve him in a serious offence under the said Act. It is interesting to note that even though the Custom Authorities had recorded the statement of accused no.2, copy exh.78 on 13.12.83, P.I. Shri Bhatt, exh.77 is not prepared to admit the fact that he had handed over accused no.2 to the Custom Authorities on 13.12.83 for the purpose of recording the statement. Similarly, the Custom Authorities had also recorded the statement of accused

nos.1 and 3 copies exhibits 79 and 80 on 13.12.83. However, P.I. Shri Bhatt is also not prepared to admit that he had handed over accused nos.1 and 3 to the Custom Authorities on 13.12.83 for recording the statements. It is an undisputed fact that accused no.2 was in police lock up during the period of his police remand. It is hardly required to be noted that if P.I. Shri Bhatt exh.77 wanted to take accused no.2 to his house or to any other house for the purpose of preparing the discovery panchnama, accused no.2 would be required to be taken out from the police lock up. P.I. Shri Bhatt has admitted during his cross-examination that whenever any accused person is put up in the police lock up and whenever any accused person is taken out from the police lock up, the necessary entry is required to be made in the Police Lock-up. However, absolutely no entry

is made in the police lock up on 13.12.83 regarding accused no.2 having been taken from the Police Lock up for the purpose of preparing the discovery panchnama exh.21. Thus, if accused no.2 was not taken out from the Police Lock-up on 13.12.83, the discovery panchnama exh.21 would become totally unreliable piece of evidence. There is also a thick shadow of doubt regarding the prosecution case about the discovery made by accused no.2.

10. As pointed out earlier, the remand period was to be over on 14.12.83 at about 6-0 p.m. P.I. Shri Bhatt exhibit-77 produced accused no.2 before the learned Magistrate on 14.12.83 and gave an application to the learned Magistrate to give accused no.2 on further police remand. The The original remand application was shown to P.I. Shri Bhatt from the record and proceedings of the Sessions Case No.126

of 1985 of this Court and he was obliged to admit that he has stated in this application for further police that the video cassettes and the photo-roll were found from the house of accused no.2 b taking a search. P.I. Shri Bhatt exh.77 is a Senior Police Officer and he would naturally understand the distinction between the Muddamal articles attached by search of a house and the Muddamal articles attached under a discovery panchnama. P.I. Shri Bhatt was called upon to explain as to why he had written that application for further police-remand that the Muddamal video cassettes and the photo-roll were attached on the search of house of accused no.2 but he was not at all in a position to give any explanation and he simply stated that he committed a mistake in making such a statement in the application for further police remand. It may be

recalled at this stage that independent Panch Pravinsinh exh.20 has deposed before this Court that the cassettes were attached by the police after taking a search and he denies that Ibrahim Bachu Bafan had produced any Muddamal article. When the application for police remand given to the Court on the very next date goes to show that the Muddamal articles were attached by taking search of the house of accused no.2, it is possible to believe P.I. Shri Bhatt exh.77 when he deposes that these Muddamal articles were attached as a result of discovery made by accused no.2 by giving information to the police and Panchas, and then by leading the police and the panchas to his house and then by producing the Muddamal articles from a locked cup-board by taking the key from one lady who was present in the house. A further doubt is created regarding the story of

the prosecution on this point because though the mandatory provisions of sub-sec.(6) of Section 100 of the Code of Criminal Procedure, 1973, requires that the copy of the search list prepared under this section and signed by the Panch witnesses shall be delivered to the occupant or the owner of the house, no such copy of Panchnama-list prepared was admittedly given either to accused no.2 or to the occupant of the house in question. I agree with the learned Special Public Prosecutor that the breach of this mandatory provision of law will not make the search illegal. But when the law requires that the copy of the panchnama signed by the witnesses should be delivered to the occupant of the house, searched by the police, the non-compliance of this mandatory provision of law will certainly create doubt in the mind of the Court."

4. Thus, the learned trial Judge has also considered the scheme of Section 100(6) of the Code of Criminal Procedure, 1973 and has observed that on facts this case is not of a mere non-compliance of the mandatory provision of Section 100(6) of the Code of Criminal Procedure, 1973, but is a case where there are several circumstances on record, which create issue of doubt regarding the prosecution case placed against the accused no.2 having given information to the police in presence of panchas and about his having produced the muddamal articles from a locked cupboard of a house.

5. The respondent-accused was in custody of the police. So it was inferable that the key must not be with the respondent-accused when he was under interrogation; otherwise in early days of interrogation, the police could have placed a positive question that the key in possession of the respondent-accused belongs to what and he could have been taken to the place, which

was allegedly shown in presence of panchas on 13th December, 1983. So the act of taking key from a lady as said by the panch-witness Pravinsinh was required to be considered by the learned trial Judge. On evidence, it is observed that there is no evidence which can be said to be clinching, upon which it can be said that the house where the respondent-accused had taken the Investigating Agency, was of his ownership and sole enjoyment. There is no sufficient evidence to link the respondent-accused with the said lady. The allegation is that the lady, who had handed over the key, was the wife of the respondent-accused, but no reliable prosecution witness has proved the said relation. The discussion made in paragraph no.11 *(First Paragraph no.11 of the judgment because Two paragraphs are given paragraph no.11)*, according to us, is logical and it is rightly observed that the lady who handed over the key could have been interrogated and cited as a witness to establish the relationship between the

respondent-accused and the lady; and the prosecution could also have proved in a better way that the cupboard was opened at the instance of the respondent-accused and on his instructions, otherwise the very lady could have been made an accused, according to us. We are also surprised that when a lady was to be interrogated or was asked to hand over the key from her custody, why the operation was carried out at odd hours i.e. during night hours. The Police Inspector Mr.Bhatt himself was not sure whether the lady who had handed over the key to the Police or to the respondent-accused was the wife of the respondent-accused or not. It was not impossible for the Police to seize the key in presence of Panchas but it appears that this exercise was not done, otherwise the learned trial Judge could have discussed that part. The key could have been produced as muddamal or relevant article to prove genuineness of recovery of the article from a particular cupboard and the interconnection with the key

and the cupboard could have been established by the Investigating Agency. When a photograph roll has been recovered from the cupboard and the key of the cupboard from which the roll was taken out was not with the respondent-accused, it was not safe for the learned trial Judge to conclude that the muddamal roll could have been said to have been recovered from the respondent-accused. On the contrary, the prosecution could have said that the muddamal roll has been recovered from the lady and she being the wife of the respondent-accused, both of them have been prosecuted. It is settled law that mere recovery of certain articles from the house in which two or more persons are living and that too of a matured age, it would not be safe or sufficient by itself to attribute a guilty knowledge to either of them unless there are some circumstances connecting particular individual with the possession of the article produced.

6. The learned trial Judge has not led sufficient evidence to prove the guilty knowledge of the respondent-accused. There was no evidence without the shadow of doubt under which it could be said that the respondent-accused no.2 had given information to the effect that he had placed the muddamal photograph roll in the cupboard and the key at that time was with his wife. In this fact situation, the respondent-accused can at the best said to have knowledge about the muddamal photograph roll lying in the cupboard and it was not safe for the trial Court to accept the words of Police Inspector Mr.Bhatt in toto as a gospel truth. The learned trial Judge has rightly relied upon the ratio of the decision in the case of ***Piara Singh and others v. State of Punjab, reported in 1970(3) SCC 49***, wherein the Apex Court has observed that :

> “22. This is particularly so because when the six empty cartridges were seized from the scene of offence

(scene of offence) on December 20, 1966 and were packed in a parcel, that parcel was sealed only with the seal of the Police Officer. Neither the signatures nor the seals of the witnesses in whose presence they were seized were affixed on that parcel. The parcel remained with the police from the 20th to the 24th December, 1966 when they were sent to the 'Forensic Laboratory'.. .. ..

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This evidence clearly estalishes that the cartridges and the gun were in police charge from the 21st to 28th March, 1967. It was argued that it was possible during this period for any one desiring to do so to break upon the seals and the parcel containing the cartridges and tamper with them and again reseal the packet as the parcel bore only the seal of the police officer and did not have the seal or

the signatures of the witnesses in whose presence they were taken charge of. .. .. ..

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In these circumstances, it is not possible to rule out altogether the possibility of the cartridges having been tampered with and accept Dr.Sharma's report at its face value.”

7. The learned trial Judge has also appreciated the evidence of Mr.Bharatkumar Upadhyay at Ex.36. The said Mr.Upadhyay is a Scientific Officer from the Forensic Science Laboratory, Ahmedabad and in view of the answers given by this witness in the cross-examination, the learned trial Judge has observed that there is ample doubt in the sealing procedure adopted by the Investigating Agency and it has been held that “this is a case where the possibility of tampering with the muddamal photo-roll cannot be ruled out”. For recording this finding, the learned trial Judge has

assigned detailed reasons and we would like to reproduce these reasons for the sake of brevity and convenience as under :

> “.. .. .. P.I. Shri Bhatt exh.77 has deposed that the cartridge containing the photo-roll and the video cassettes were sealed with the lac seal of Bhuj City Police Station after affixing the slip bearing the signatures of both the Panchas. He has also deposed that he himself had also put his signature on that slip bearing the signatures of both the Panchas. However, his evidence given to the effect that the slip bearing the signatures of the Panchas and his signature was affixed on the cartridge containing photo-roll cannot be believed. What I am trying to point out is that P.I. Shri Bhatt does not appear to have affixed the slip bearing the signatures of the Panchas on the cartridge containing the photo-roll. It

is needless to state that if the slip bearing the signature of the Panchas was affixed by pasting gum on the cartridge containing the photo-roll, this slip would be torn when the cartridge was opened by the Senior Scientific Assistant Shri Upadhyay exh.66 at the time of taking out the photo-roll from that cartridge in the Forensic Science Laboratory, Ahmedabad. However, the slip bearing the signatures of the panchas is intact. It was taken out from the envelope in which the Muddamal cartridge and the photo-roll are lying before the Court and it was shown to P.I. Shri Bhatt exh.77 and also to Panch witness Pravinsinh exh.20. I have also today examined during the course of dictating this judgment the original slip from Sessions Case No.128 of 1985 and I have found that this slip is absolutely intact and there is absolutely no sign

of gum applied on the reverse of this slip. It is also important to note that Shri Upadhyay exh.66, then serving as Senior Scientific Assistant in the Forensic Science Laboratory, Ahmedabad and who had received the Muddamal cartridge containing the photo-roll, does not depose a word about his having noticed any slip bearing the signatures of the panchas on the cartridge containing the photo-roll. His letter exh.71 and his report exh.72 are also totally silent on this point. It, therefore, appears that the slip bearing the signatures of the Panchas was never affixed on the cartridge containing the photo-roll and that only a lac seal was affixed on the Muddamal cartridge. This being the position it was very easy for the police to tamper with the Muddamal photo-roll. I may further point out at this stage that during the searching cross-examination

of P.I. Shri Bhatt by the learned advocate for accused no.2, it has come on record that P.I. Shri Bhatt had not taken with him the original Panchnama to the office of the Forensic Science Laboratory to enable the office of the Forensic Science Laboratory to tally the signature of the Panchas on the original Panchnama and the signatures which might be there on the slip which might have been affixed on the Muddamal cartridge. Before taking the Muddamal photo-roll and the cartridge to the Forensic Science Laboratory, the P.I. Shri Bhatt did not prepare the Panchnama to the effect that the seal and the slip affixed on the Muddamal cartridge were the same which were applied at the time of attaching the same under the Panchnama copy exh.21. P.I. Shri Bhatt exh.77 has also admitted during his cross-examination that the Muddamal remained in his

posesssion till he handed over the same to the Forensic Science Laboratory on 20.12.83. It is also interesting to note that he has further admitted that he had not affixed the seal on the slip bearing the signatures of the Panchas. He has further admitted that he did not remember whether he had affixed any seal on the cartridge containing the photo-roll or whether he affixed the seal on the envelope in which the cartridge was placed. There is one thing more which is also required to be noted. It is the evidence of P.I. Shri Bhatt exh.77 that he had affixed the lac seal of BHUJ City Police Station on the Muddamal cartridge containing the photo-roll. However, Shri Upadhyay exh.66 has deposed that the cartridge containing the photo-roll which was received by him bore the seal of Police-Sub-Inspector, Bhuj-Kutch. It is, therefore, very clear that the seal

which was found by Shri Upadhyay on the Muddamal cartridge did not tally with the one which was affixed by P.I. Shri Bhatt exh.77."

8. The learned trial Judge, according to us, has rightly appreciated the evidence of Wing Commander Shri Pratapsinh Chaudhari at Ex.76 and relevant photographs of prohibited area namely the Bhuj Air Force Station and it is observed that even if it is accepted that at the instance of the respondent-accused, Mr.Upadhyay had developed the said photographs and the negatives are genuine, then also it is not possible to connect the respondent-accused no.2 with the offence because the genuineness of the recovery has not been proved at the instance of the respondent-accused and the sealing procedure of undeveloped photographs is not found trustworthy and the learned trial Judge has found that there is a scope of tampering with the sealing procedure. The learned trial Judge has rightly observed that

it was not impossible to plant the photo-roll or photographs because anybody who goes on pilgrimage of temple located near the Bhuj Air Force Station, which is on a hillock, can take such photographs. The availability of photographs of one bridge which is at a distance of about 7 (seven) kms. found along with these photographs of the Bhuj Air Force Station would not make the recovery genuine.

9. We are also inclined to observe that the involvement of the respondent-accused no.2 was mainly on the ground of the alleged criminal behaviour of the respondent-accused no.2 and therefore only, he was being charged and tried with the respondent-orig.accused no.1 for the offence of criminal conspiracy punishable under Section 120(B)(1) of the Indian Penal Code. When there is no case against the respondent-accused no.2, it would not be sufficient for us to hold that the finding recorded by the learned trial Judge qua the respondent-accused no.2 is either illegal or

perverse.

10. The reasons recorded by the learned Judge are logical and there is no element of perversity or patent illegality. The Apex Court in a decision in the case of ***Dwarkadas v. State of Haryana, reported in (2002) 1 SCC 204,*** has reiterated the principles of law where it has been held that the judgment and order of acquittal normally should not be reversed merely because the other view is possible. In the same way, the observations of the Apex Court in the case of ***Kanshiram v. State of Madhya Pradesh (Re.Para-21), reported in AIR 2001 SC 2902,*** in respect of appeal against the order of acquittal, positively would help the accused. As per the settled legal position, while appreciating the order of acquittal, the Court should go slow in reversing the order of acquittal unless the order is absolutely illegal and perverse. In view of the ratio of the above cited decision, there is no merit in the present appeal and the same is required to be dismissed.

11. In view of above observations and discussion, we do not find any merit in this appeal and hence, the same is hereby dismissed. The judgment and order of acquittal dated 16th April, 1986, passed by the learned Additional City Sessions Judge, Court No.6, Ahmedabad, in Sessions Case No.129 of 1985, is hereby confirmed. The bail bond, if any, shall stand cancelled.

(C.K. Buch, J)

(Sharad D. Dave, J)

Aakar